14.10.2026
Ct. No. 17
Sl. No. 12
RANJAN

FMA 383 of 2026
IA NO. CAN 1/2026
(ASSIGNED)

SK. ABDUL SABIR & ASSOCIATES REPRESENTED BY SK. ABDUL SABIR, THE MANAGING PARTNER
VS.
THE STATE OF WEST BENGAL AND ORS.

Mr. Sakya Sen
Mr. Deep Nath Roy Choudhury
Mr. Dip Jyoti Chakraborty
Mr. Satrajeet Sen
....for the appellant
Mr. Rivu Dutta
Mr. Swarvanu Saha
....for the State

1. This appeal is directed against an order dated 09.02.2026 dismissing the writ petition.
2. Briefly, the appellant/writ petitioner had filed the writ petition seeking *inter-alia* a mandamus commanding the respondent no. 6 to cancel, rescind and withdraw the decision dated 31.07.2023. By such decision, the Revenue Authorities had found that the Memorandum of Understanding dated 27.01.2009 was a conveyance within the meaning of section 2(10) of the Indian Stamp Act, 1899 read with Article 23.
3. It is contended on behalf of the appellant that the finding in the impugned judgment of the MOU being registerable as a conveyance is erroneous and is liable to be set aside. The

MOU could not have been construed as a conveyance under the provisions of the Indian Stamp Act, 1899. On a holistic reading of the MOU, the appellant had only become a shareholder after taking care of the financial liability of the company and had agreed to repay a loan of Rs. 6.10 crores in consideration thereof. The only transfer which had taken place in terms of the MOU was of the shares by the existing shareholders. The company was not even a party to the MOU and hence, there could have been no question of any transfer of ownership of the assets of the company. In support of such contentions, the appellant relies on *Saregama India Limited and another v. State of West Bengal and others, 2023 SCC Online Cal 5089, paragraphs 10 to 12, Madras Refineries v. Chief Controlling Revenue Authority (1977) 2 SCC 308, paras 5, 11, Barcha F. Guzdar Vs. CIT, Bombay, (1954) 2 SCC 563, paras 9-11, 13 and Purna Investment Vs. Bank of India, 1982 SCC Online Cal. 296, para 1.*

4. On behalf of the respondent State Authorities, it is contended that a composite reading of the MOU would indicate that the parties were trying to transfer immoveable property belonging to the company. As a rule of

construction, it is impermissible to split documents when reading the same. The assertion of ownership of the assets of the company in the MOU indicates that there was a transfer of the immoveable property of the company. Hence, the impugned order does not justify any interference.

5. It is fundamental to company jurisprudence that a company is an artificial person though composed of natural persons. It is a separate legal entity in itself. The separate legal personality of a company was established by the House of Lords in the leading case of *Salomon vs. Salomon and Co Ltd (1897) AC 22*. In the said decision, Lord Macnaghten had held that "*the company is at law a different person altogether from the subscribers to the Memorandum and, although it may be that after incorporation the business is precisely the same as it was before, and the same persons are managers and the same hands receive the profits, the company is not in law the agent of the subscribers or trustee for them. Nor are subscribers as members liable, in any shape or form, except to the extent and in the manner provided by the Act. That is, I think, the declared intention of the enactment*".

6. The consequence of the company having a separate corporate personality means that the assets of a company do not belong to any of the shareholders. The only right which a shareholder has in the assets of the company is indirectly through the medium of their shares. They have no proprietary right in the assets of the company. It is the company and only the company which is the owner of its assets whether movable and immovable.

In Bacha F. Guzdar Vs. CIT Bombay (supra), it has been held as follows —

> ***"9.*** *It was argued by Mr. Kolah on the strength of an observation made by Lord Anderson in Commissioners of Inland Revenue v. Forrest(1), that an investor buys in the first place a share of the assets of the industrial concern proportionate to the number of shares he has purchased and also buys the right to participate in any profits which the company may make in the future. That a shareholder acquires a right to participate in the profits of the company may be readily conceded but it is not possible to accept the contention that the shareholder acquires any interest in the assets of the company. The use of the word 'assets' in the passage quoted above cannot be exploited to warrant the inference that a shareholder, on investing money in the purchase of shares, becomes entitled to the assets of the company and has any share in the property of the company. A shareholder has got no interest in the property of the company though he has undoubtedly a right to participate in the profits if and when the company decides to divide them****."***
>
> ***"10.*** *The interest of a shareholder vis-a-vis the company was explained in the case of Chiranjitlal Chowdhuri v. The Union of India and Others(1). That judgment negatives the position taken up on behalf of the appellant that a shareholder has got a right in the property of the company. It is true that the shareholders of the company have (1) (1924) 8 T.C. 704,710., (2) [1950] S.C.R. 869, 904.*
> *the, sole determining voice in administering the affairs of the company and are entitled, as provided by the Articles of Association to declare that dividends should be distributed out of the profits of the company to the shareholders but the interest of the shareholder either individually or collectively does not amount to more than a right to participate in the profits of the company. The company is a juristic person and is distinct from the*

*shareholders. It is the company which owns the property and not the shareholders. The dividend is a share of the profits declared by the company as liable to be distributed among the shareholders***."**

"11. *Reliance is placed on behalf of the appellant on a passage in Buckley's Companies Act, 12th Ed., page 894, where the etymological meaning of dividend is given as dividendum, the total divisible sum but in its ordinary sense it means the sum paid and received as the quotient forming the share of the divisible sum payable to the recipient. This statement does not justify the contention that shareholders are owners of a divisible sum or that they are owners of the property of the company. The proper approach to the solution of the question is to concentrate on the plain words of the definition of agricultural income which connects in no uncertain language revenue with the land from which it directly springs and a stray observation in a case which has no bearing upon the present question does not advance the solution of the question. There is nothing in the Indian law to warrant the assumption that a shareholder who buys shares buys any interest in the property of the company which is a juristic person entirely distinct from the shareholders. The true position of a shareholder is that on buying shares an investor becomes entitled to participate in the profits of the company in which he holds the shares if and when the company declares, subject to the Articles of Association, that the profits or any portion thereof should be distributed by way of dividends among the shareholders. He has undoubtedly a further right to participate in the assets of the company which would be left over after winding up, but not in the assets as a whole as Lord Anderson puts it.***"***

Similarly, in Purna Investment Vs. Bank of India,

(Supra) it has been held as follows—

" 1. In the other appeal, which was filed by Purna Investment Co. Ltd., in which it was not a party to the suit or to the Section 397-application, but was only a shareholder in the company concerned, the learned trial judge had not given them leave to intervene in the suit. It may incidentally be mentioned that Puma Investment Co. Ltd. is a company in which Mohonlal Mittal and his group are closely associated and they have the controlling interest. Being aggrieved by the said order of the learned trial judge, this appeal has been filed before this court praying, inter alia, for leave to intervene and oppose the terms of settlement. Various questions have arisen on this aspect, but the main question is, whether a shareholder, as such, has such interest in a company which entitles him to intervene in respect of a suit pending against the company in respect of some of its assets. It is well settled that a shareholder has certain interest. It has been said very clearly that the shareholder's right is to participate, firstly, in the winding up in case a winding up order is made and, secondly, a shareholder has a right of payment of dividend where dividends are declared. In aid of the submission that the shareholder has sufficient interest in the company, the learned advocate for Purna Investment

Co. Ltd. seeking to intervene in the appeal, drew our attention to certain observations in Modern Corporate Law by Oleck, vol. 3, Article 1595, at page 668. Our attention was also drawn to Order 1, Rule 10. It was submitted that under Order 1, Rule 10, Sub-rule (2), as the plaintiff had a share in the assets of the company, he was interested when question of bona fide of the settlement has been raised. Our attention was also drawn to certain observations in the decision of the American Supreme Court in McCabe v. Atchison [1914] (235 US 151) at page 162. On the nature of the right of the shareholder of the company in respect of the assets of the company, reliance was placed on certain observations of the Supreme Court of India in the case of Charanjit Lal Chaudhari v. Union of India [1951] 21 Comp Cas 33 (SC) and our attention was drawn to p. 37. The Supreme Court was considering, in that case, the question of the locus standi of the shareholder in maintaining an application under Article 32 of the Constitution in respect of certain actions taken against the company which affected the assets of the company. The Supreme Court, at p. 37 of this judgment, referred to the decision of the United States of America, namely, decision in the case of McCabe v. Atchison [1914] (235 US 151), to which, as we have mentioned hereinbefore, our attention was independently drawn. The United States Supreme Court reiterated that injury to the complainant of a legal right justified judicial interference. Reliance was placed on these observations in aid of the proposition that if a legal right was interfered with, which it was contended that the company had in respect of the assets of the company, interference with those legal rights justified right to intervene. The Supreme Court was categorical on the nature of the shareholder's right vis-a-vis the assets of the company in the case of Bacha P. Guzdar v. CIT [1955] 25 Comp Cas 1 ; 27 ITR 1, where the Supreme Court observed that a shareholder acquired rights to participate in the profits of the company, might be readily conceded but it was not possible to accept the contention that the shareholder acquired any right in the assets of the company. A shareholder has no right in the property of the company. The Supreme Court observed that there was nothing in the Indian law to warrant the assumption that a shareholder who bought shares acquired any interest in the property of the company which was a juristic person entirely distinct from the shareholder. The true position of a shareholder was that, on buying shares, an investor became entitled to participate in the profits of the company in which he held the shares if and when the company declared dividends subject to the articles of association that the profits or any portion thereof should be distributed by way of dividends among the shareholders. He had undoubtedly a further right to participate in the assets of the company which would be left over after distribution among the creditors. But he had no right in the assets as a whole."

7. The crucial fact which is evident on a plain reading of the MOU is that the company is *eo nomine* not even a party to the same. In such

circumstances, there could have been no transfer of the assets of the company. Prior to execution of the MOU, the company was the owner of its assets and even thereafter the company remains to be the owner of its assets. There is no deed of transfer executed as prescribed in the manner under section 48 of the Companies Act, 1956 read with Regulation 84, Table A, Schedule I. The MOU does not also bear the seal of the company which is compulsory in order to bind the company. A transferee of shares is not to be treated as a transfer of the company's assets. This is vital to understanding the true nature and legal character of the MOU.

8. Under Section 2(10) of the Indian Stamp Act, 1899 an instrument only qualifies as a conveyance, if property or interest in any property is transferred to or vests in any person *inter vivos*. This is an essential pre-requisite before any transfer of property or vesting of the same can take place. [*Saregama India Limited and another Vs. State of West Bengal (Supra).*].

9. It is true that portions of the MOU indicate that the parties may have intended to deal with immovable properties of the company

but this does not amount to the company transferring its assets. The only right which the appellant acquires under the MOU is a right as a shareholder and not *qua* owner of the assets of the company. In such circumstances, there is no transfer of immovable property of the company by virtue of the MOU. The immoveable property of the company does not change hands but remains with the company.

10. There is no quarrel with the proposition that it is impermissible in law to split the document and the document must be read as a whole. To this extent, nomenclature of the document is also irrelevant.

11. To reiterate, it is fundamental that a shareholder has no right nor interest in the assets of the company. Thus, transfer of shares cannot be construed as transfer of the assets of the company to the appellant. This is a fatal infirmity in the impugned judgment.

12. In view of the above, the appeal succeeds.

13. The communication dated 31.07.2023 read with order passed by the District Magistrate, Hooghly dated 07.09.2023 is set aside. The impugned order is also set aside.

14. In view of the above, FMA 383 of 2026 is allowed. All connected applications stand dismissed.

[RAVI KRISHAN KAPUR, J.]

[ATARUP BANERJEE, J.]